313 U.S. 9

FILED
MAR 10 1941
CHARLES ELMORE CROPLEY
CLERK

# Supreme Court of the United States

OCTOBER TERM, 1940

No. 830

THOMAS F. STEIN, JR.

Petitioner

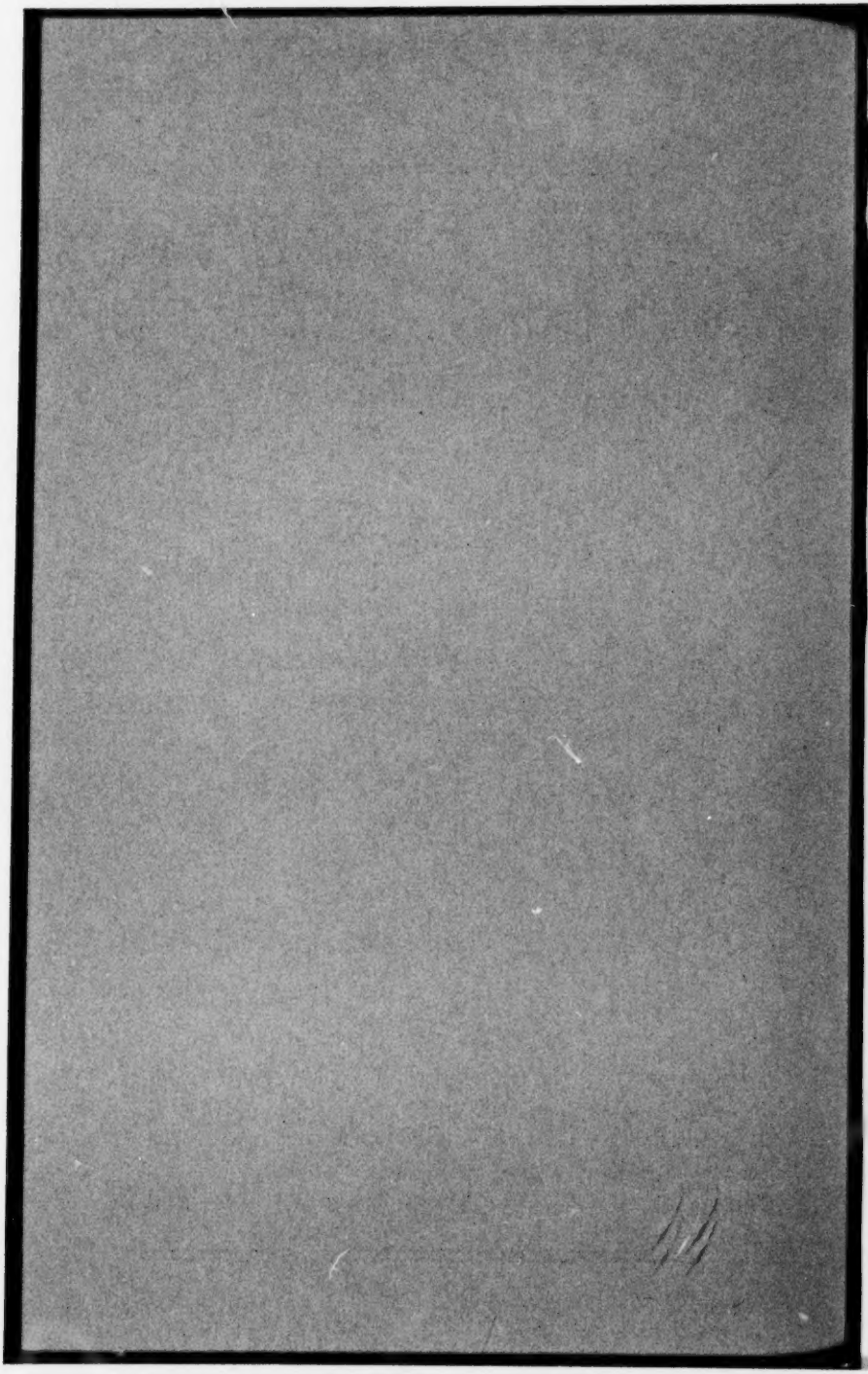
vs.

STATE OF ALABAMA

PETITION OF THOMAS F. STEIN, JR.

FOR

WRIT OF CERTIORARI



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The petition of Thomas F. Stein respectfully shows to this Honorable Court that the State of Alabama filed suit against him in the Circuit Court of Mobile County, Alabama (R. 1, 2, 3,) claiming a license tax due from him under a statute levying a fixed-sum license on everyone engaged in the business of merchandise broker or commission agent.

## NATURE OF THE CASE

Stein, the petitioner, represented thirteen principals, all non-residents of the State of Alabama, and was engaged in the business of negotiating contracts between such non-resident principals and wholesale grocers resident in Alabama, and did not hold himself open as being willing to represent principals generally, but only non-resident principals and only such of those as he elected to represent. He would procure orders for merchandise from the local wholesalers and send in these orders to his non-resident principals who, if they accepted the orders, filled them by shipment direct to the purchaser. The order was filled by the non-resident principal and Stein was paid by way of commission based on his monthly sales. (R. 5, 6, 7, 8 and 9).

The State of Alabama levied a license tax as follows:

> "Every person, firm, company, corporation or association, receiver or trustee (not under governmental supervision) engaged in any business, vocation, occupation, calling or profession herein enumerated, or who shall exercise any privilege hereinafter described for which a license or privilege tax is required, shall first procure a State license and a County license when so required.....
>
> For every commission merchant or merchandise broker in cities of 50,000 inhabitants or over .....$50.00

In cities and towns of 25,000 and less than 50,000 inhabitants ..... 35.00

In cities and towns of 10,000 and less than 25,000 inhabitants ..... 25.00

In cities and towns of 5,000 and less than 10,000 inhabitants ..... 15.00

In cities and towns under 5,000 inhabitants whether incorporated or not ..... 10.00

There is also hereby levied for the use of each County in the State a license or privilege tax upon each person, firm, or corporation engaged in, or who shall carry on any of the occupations, businesses, professions or callings, or shall exercise any privilege or do any act for which a license is charged by the State, of fifty per cent (50%) of the State license or privilege tax, except as herein otherwise provided." (See General Acts 1935, Section 348, Page 441, Schedule 29, Page 450, Clause B, Section 350, Page 558).

An agreed statement of facts setting out in substance that which has been hereinabove set out was filed in the case, and the question was therefore presented:

1. As to whether Stein's course of conduct constituted interstate commerce; and

2. If Stein's course of conduct did constitute interstate commerce, was the license levied by the State a violation of the interstate commerce clause of the Federal Constitution (Article 1, Section 8, Clause 3).

In the trial court a judgment was rendered in favor of Stein (R. 4). The State thereupon prosecuted an appeal to the Court of Appeals of the State of Alabama, and the Court of Appeals concurred in the decision of the lower court and held that Stein's conduct amounted to interstate commerce and that the license levied on him was violative of the commerce clause of the Federal Constitution (R. 12 and 13).

The State of Alabama filed a petition in the Supreme Court of Alabama seeking the issuance of a writ of certiorari and the Supreme Court of Alabama reversed the holding of the Court of Appeals. The Supreme Court of Alabama therefore ruled that Stein was not engaged in interstate commerce and that even if he were engaged in such commerce, the license was non-discriminatory and therefore valid (R. 17, 18, 19, 20 and 21). The Supreme Court of Alabama is the Court of last resort of that State.

Your petitioner asserts that the judgment of the Supreme Court of the State of Alabama is erroneous and assigns the following specifications of error:

1. The Supreme Court of Alabama erred in holding that Stein was not engaged in interstate commerce.

2. One who represents non-resident principals exclusively and negotiates contracts between such non-residents and residents of the taxing state is

engaged in interstate commerce where the merchandise which is the subject of such solicitation is without the state at the time of the solicitation and is afterwards shipped into the state as a result of such solicitation.

3. The Supreme Court of Alabama erred in holding that even if Stein were engaged in interstate commerce, the license levied, being non-discriminatory, was valid.

4. Because the Supreme Court of Alabama erred in assuming that because the license was non-discriminatory it was therefore valid in that it would only be valid under such circumstances if the burden placed on interstate commerce was indirect.

5. The Supreme Court of Alabama erred in holding that the license levied on Stein was valid because it places a direct burden on interstate commerce.

6. The Supreme Court of Alabama erred in holding the license valid because a fixed-sum license levied on one who is engaged in negotiating contracts for the sale of merchandise between non-residents of a state and residents of such state infringes the commerce clause, by placing a direct burden on interstate commerce, where shipment of the merchandise is made by such non-residents direct to the purchaser and where the merchandise was not in the state of the purchaser at the time the order was procured.

Under these circumstances, and because the Supreme Court of Alabama passed on the validity of the statute of the State of Alabama set out herein, claimed to be repugnant to the Federal Constitution, it is asserted that this Court has jurisdiction to review the decision of the Supreme Court of Alabama by way of writ of certiorari. (Judicial Code 237, 28 U. S. C. A., Section 344 B).

The date of the judgment of the Supreme Court of Alabama sought to be reviewed was October 10, 1940, rehearing denied December 12, 1940.

The ruling of the Supreme Court of Alabama is in conflict with the following decisions of this court:

Robbins v. Taxing District of Shelby County, 120 U. S. 498.

Stockard v. Morgan, 185 U. S. 27.

Realsilk Hosiery Mills v. Portland, 268 U. S. 325.

Best & Company, Inc. v. Maxwell, 61 Supreme Court Reporter 334 (Advance Sheet).

Disanto v. Pennsylvania, 273 U. S., 34.

Texas Transport & Terminal Company v. City of New Orleans, 264 U. S. 150.

It is contended that the questions involved are identical in that the exact same situation with no differences was presented to this Court in the case of Stockard v. Morgan, supra, and this Court there held the license void. This ruling of the Court has not been overruled and, in fact, has been confirmed from time to time, even in the last few months.

The Federal question, viz. the unconstitutionality of the law because of the violation of the commerce clause of the Federal Constitution, was raised in the nisi prius court on the trial of this cause, the issue being raised by an agreed statement of facts filed in the case. The only question raised by said agreed statement of facts was whether the license was violative of the commerce clause; this likewise was the only question which was presented to the Court of Appeals of the State of Alabama, to which Court an appeal was taken from the nisi prius court and this question was raised by the Assignment of Error of the Appellant.

The Circuit Court and the Court of Appeals both held the license violative of the commerce clause and therefore void, and the State of Alabama filed in the Supreme Court of Alabama a petition for Certiorari, which petition was granted and the cause reviewed. The federal question, viz. the infringement of the commerce clause, was raised in the Supreme Court of Alabama in the petition for Certiorari by setting out therein the grounds on which the issuance of said Writ was sought.

There was no written opinion by the Circuit Court. The Court of Appeals disposed of the matter by saying in its opinion as follows:

> "To the contrary, this Court concludes from said agreed facts that Appellee is engaged exclusively in interstate commerce only, and the exaction of a license under the above section would be in direct violation of Article 1, Section 8 of the Constitution of the United States, which prohibits the various states from interfering with interstate commerce." (R. 12).

The Supreme Court of Alabama disposed of the federal question by saying in its opinion as follows:

> "The position of the State's Counsel, in which we concur, is that Stein is not engaged in interstate commerce and if so, the non-discriminatory license tax upon him (the same license tax being imposed upon one doing intrastate business) is not inconsistent with the commerce clause of the Federal Constitution" (R. 19).

Assignment of Error number 3, made in the Court of Appeals and which raised the federal question of violating the commerce clause (R. 11), was answered by the above-quoted portion of the opinion of the Court of Appeals. The following grounds for granting the petition for a Writ of Certiorari raised in the Supreme Court of Alabama the federal question of violation of the commerce clause, viz. Grounds 4, 5, 6 and 8 (R. 15 and 16), and the above-quoted portion of the opinion of the Supreme Court of Alabama answered the grounds just above named.

WHEREFORE, your petitioner prays that a Writ of Certiorari may be issued out of this Court directed to the Supreme Court of Alabama.

THOMAS F. STEIN, JR.
Petitioner.

MARION R. VICKERS,
Counsel For Petitioner.